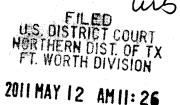
ORIGINAL

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION



Promotes -

HARRY AND ABBY THOMAS	§	CLERK OF COURT
D1-2-4266	§	
Plaintiffs,	8 8	· · · · · · · · · · · · · · · · · · ·
	§	
	<b>§</b>	CTTVV 4 CTTVON NO. 4 44 0024 4 A
<b>V.</b>	§ 8	CIVIL ACTION NO. 4:11-cv-00314-A
COUNTRYWIDE KB HOME	§ .	
LOANS AND KB HOME LOAN	§	
STAR LB, A TEXAS LIMITED	§	
PARTNERSHIP,	§	
	§	
Defendants.	Š	

# DEFENDANT KBA MORTGAGE, LLC, F/K/A KB HOME MORTGAGE, LLC, F/K/A COUNTRYWIDE KB HOME LOANS, LLC, INCORRECTLY NAMED AS COUNTRYWIDE KB HOME LOANS FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Defendant KBA Mortgage LLC, formerly known as KB Home Mortgage, LLC, formerly known as Countrywide KB Home Loans, LLC, incorrectly named as Countrywide KB Home Loans ("KBA") files this First Amended Original Answer and Affirmative Defenses to Plaintiffs' Harry and Abby Thomas ("Plaintiffs") First Amended Petition ("Amended Petition") and responds to the numbered paragraphs as follows:

# I. RESPONSE TO AMENDED PETITION

- 1. KBA has removed this action from state court and therefore denies the allegation in paragraph 1 of the Amended Petition.
- 2. KBA admits that paragraph 2 of the Amended Petition correctly identifies the Plaintiffs.

- 3. KBA is without knowledge or information to form a belief about the truth of paragraph 3 of the Amended Petition and therefore denies same.
- 4. KBA denies that paragraph 4 of the Amended Petition correctly identifies KBA as a party.
- 5. KBA is without sufficient information upon which to base a belief in the veracity of the allegations of contained in the unnumbered paragraphs of Section IV of the Amended Petition and therefore denies same.
- 6. KBA denies the allegations of paragraph 1 in the Causes of Action of the Amended Petition.
- 7. KBA denies the allegations of paragraph 2 in the Causes of Action of the Amended Petition.
- 8. KBA denies the allegations of paragraph 3 in the Causes of Action of the Amended Petition.
- 9. KBA denies that Plaintiffs are entitled to any of the relief requested in the unnumbered Prayer at the conclusion of the Amended Petition.

### II. AFFIRMATIVE DEFENSES

And now, setting forth its defenses affirmatively, KBA states:

#### FIRST DEFENSE

Plaintiff Abby Thomas lacks standing to pursue any claims against KBA.

#### **SECOND DEFENSE**

Plaintiffs' claims under the Truth in Lending Act, the Real Estate Settlement Practices

Act and for civil conspiracy are barred by their respective statutes of limitation.

#### THIRD DEFENSE

Plaintiff Harry Thomas's claims are barred by the contractual defense of waiver.

### **FOURTH DEFENSE**

Plaintiffs' claims for fraudulent inducement and civil conspiracy are barred by the economic loss doctrine.

### **FIFTH DEFENSE**

Plaintiffs' claims for breach of contract and fraudulent inducement are barred by the statute of frauds.

## **SIXTH DEFENSE**

Plaintiffs are not entitled to recover attorneys' fees.

KBA reserves the right to add additional affirmative defenses as they become known through further investigation and/or discovery.

WHEREFORE, KBA respectfully requests judgment of the Court that Plaintiffs take nothing by their suit and such further relief, both at law and in equity, to which it may be justly entitled.

Respectfully submitted,

JEFFREY R. SEEWALD

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ATTORNEYS FOR KBA MORTGAGE, LLC F/K/A KB HOME MORTGAGE, LLC, F/K/A COUNTRYWIDE KB HOME LOANS, LLC

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was sent to all parties by and through their counsel of record on this the 12th day of May 2011.

# <u>VIA FACSIMILE (817) 926-5165 AND</u> <u>VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED</u>

N. Sue Allen ALLEN LAW FIRM 2200 Forest Park Blvd. Suite 107 Fort Worth, Texas 76110

NATHAN T. ANDERSON